

STATE OF MICHIGAN
COURT OF APPEALS

MC SPORTING GOODS

Petitioner-Appellant,

v

CITY OF TROY,

Respondent-Appellee.

UNPUBLISHED

August 10, 1999

No. 196918

Tax Tribunal

LC No. 00-192750

Before: Bandstra, C.J., and Whitbeck and Talbot, JJ.

PER CURIAM.

Petitioner appeals as of right the Michigan Tax Tribunal's opinion and judgment affirming respondent's 1993, 1994, and 1995 personal property tax assessments. We affirm.

Petitioner first argues that this Court should reverse the Tax Tribunal's findings as to the valuation of petitioner's leasehold improvements, based on its reading of MCL 211.8(h); MSA 7.8(h), which provides, as pertinent, that "[t]he cost of leasehold improvements and structures on real property shall not be the sole indicator of value." Petitioner argues that the tribunal erred in accepting respondent's determination of the true cash value of petitioner's leasehold improvements, which it determined by ascertaining the acquisition costs of the leasehold improvements and subtracting depreciation and obsolescence. In petitioner's view, this method of valuation violates MCL 211.8(h); MSA 7.8(h). We do not conclude that the tribunal made an error of law in adopting respondent's valuation method.

This Court's review of the Tax Tribunal's decision is limited by the Michigan Constitution, which provides:

In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation. [Const 1963, art 6, § 28.]

Thus,

[w]hile this Court is bound by the Tax Tribunal's factual determinations and may properly consider only questions of law under this section, a Tax Tribunal decision that is not supported by competent, material, and substantial evidence on the whole record is an "error of law" within the meaning of Const 1963, art 6, § 28. Substantial evidence must be more than a scintilla of the evidence, although it may be substantially less than a preponderance of the evidence. "Substantial" means evidence that a reasonable mind would accept as sufficient to support the conclusion. [*Great Lakes Division of National Steel Corp v Ecorse*, 227 Mich App 379, 388-389; 576 NW2d 667 (1998) (citations omitted).]

This Court reviews questions of statutory interpretation de novo on appeal. *State Defender Union Employees v Legal Aid and Defender Ass'n of Detroit*, 230 Mich App 426, 431; 584 NW2d 359 (1998). The goal of judicial interpretation of a statute is to ascertain and give effect to the Legislature's intent. *Id.* The first criterion in determining intent is the statute's specific language. *Id.* "If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted, and courts must apply the statute as written." *Id.* Also applicable here is the presumption that the Legislature was aware of existing rules when it promulgated the statute at issue. See *Nummer v Dep't of Treasury*, 448 Mich 534, 544; 533 NW2d 250 (1995) (knowledge of common law); *Walen v Dep't of Corrections*, 443 Mich 240, 248; 505 NW2d 519 (1993) (knowledge of existing statutes).

We disagree with petitioner's contention that MCL 211.8(h); MSA 7.8(h) prohibits respondent from using a cost-based approach to determine the true cash value of leasehold improvements. The pertinent language of the statute states only that "[t]he cost of leasehold improvements and structures on real property shall not be the *sole* indicator of value" (emphasis added). This simply means, consistent with existing law on the subject, that leasehold improvements, like all property, may be valued not only with reference to their cost, minus depreciation and obsolescence - - the so-called cost-less-depreciation approach - - but also by using the capitalization-of-income approach and the sales-comparison or market approach, two other common methods for determining the true cash value of property. See *Great Lakes Division, supra* at 390. Petitioner was free to submit evidence of true cash value using any of these three approaches, or, indeed, variations of these approaches and entirely new methods, if accurate and reasonably related to market value. See *id.* Had the tribunal considered the cost of the leasehold improvements to be the sole indicator of their value and prohibited the use of other methods to determine their true cash value, it would have committed an error of law. However, it was not erroneous to accept respondent's cash-less-depreciation valuation of petitioner's leasehold improvements, especially in light of petitioner's stipulation that "the Leasehold Improvement assets included by Respondent are the correct dollar amounts according to the books and records of Petitioner." Petitioner has failed to demonstrate an error of law in the valuation of its leasehold improvements.

Next, petitioner argues that it was improper for respondent to consider the costs of installation, freight, and sales tax when determining the true cash value of its personal property. We disagree.

Here, consistent with the practices of the State Tax Commission (“STC”), respondent’s assessor included the costs of sales tax, freight, and installation in the acquisition cost of petitioner’s personal property and applied the appropriate multipliers to this amount in order to determine the true cash value of petitioner’s personal property. In *Lionel Trains, Inc v Chesterfield Twp*, 224 Mich App 350, 354-355; 568 NW2d 685 (1997), this Court determined that the costs of sales tax, freight, and installation properly could be considered in true cash value if they were reflected in market value. Here, petitioner failed to present any evidence at all of market value in order to prove its contention that respondent’s inclusion of sales tax, freight, and installation costs inflated the true cash value of petitioner’s property well over the market value of the property. Petitioner’s expert merely speculated that the inclusion of the cost of freight and installation inflated the true cash value of its personal property, admitting that he was completely unaware of the actual amount that petitioner spent on freight and installation. As for sales tax, petitioner’s expert again merely speculated that the acquisition cost of its assets included \$30,000 in sales tax. As respondent notes, this estimation is patently absurd. Respondent did not calculate the acquisition cost of petitioner’s personal property at anywhere near the approximately \$500,000 necessary to yield such a sales tax figure. Petitioner’s failure to prove that inclusion of these costs inflated the true cash value of its property well over fair market value was fatal, as petitioner, not respondent, bore the burden of proving true cash value. MCL 205.737(3); MSA 7.650(37)(3); *Oldenburg v Dryden Twp*, 198 Mich App 696, 698-699; 499 NW2d 416 (1993).

Finally, petitioner argues that the STC’s and respondent’s use of multipliers that distinguish between personal property that is in use, idle, and completely obsolete is unconstitutional because it violates the provision of the state constitution that calls for the uniform taxation of property, Const 1963, art 9, § 3. To remedy this, petitioner contends that respondent and the tribunal should use the STC’s economic residual multiplier to determine the true cash value of personal property, which will render the lowest true cash value for all personal property within the state. However, in *Lionel Trains, supra* at 352-354, this Court rejected both of these arguments. Like the petitioner in *Lionel Trains*, petitioner in the instant case has failed to submit any evidence whatsoever that respondent’s use of the STC’s multipliers resulted in a determination of true cash value greatly above the value that petitioner’s personal property would bring on the open market. Accordingly, we reject petitioner’s arguments.

We affirm.

/s/ Richard A. Bandstra

/s/ William C. Whitbeck

/s/ Michael J. Talbot